IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.529 (MS) OF 2006

Km. Anita Joshi, D/o late A.D. Joshi,
R/o 20 Bank House, Mall Road,
District-Nainital. .....Petitioner.

Versus

1. Sub Divisional Magistrate, Nainital.
   acting as District Magistrate, Under U.P. Act No. XIII of 1972.
2. Anil Mehta, S/o late M.M. Mehta,
   R/o Industrial Estate Haldwani, District Nainital.
3. Damyanti Negi
4. Suresh Chandra Joshi, S/o late Jagan Nath Joshi,
   R/o Kaladhungi Road, Haldwani, District-Nainital.

.....Respondents.

Mr. H.S. Rawat, Advocate for the petitioner.
Standing Counsel for the respondent no. 1.

Dated: 09.05.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 13.10.2004 passed by respondent no. 1 in Case No. 51 of 2003-04 (Annexure No. 6 to the writ petition).

Briefly stated, the dispute relates to Building No. 16 (on the first floor) situated in Bank House Mall Road, Nainitaland the same is in the tenancy of one late M.M. Mehta. The petitioner has submitted that the tenant on account of various ailments had left and was residing with this son namely Anil Mehta i.e. respondent no. 2 at Haldwani. However, the said tenant died in the month of June, 2003 and the building in question is lying closed.

The petitioner has applied for allotment and it has been held by the Rent Control and Eviction Officer that the premises is not vacant. The Rent Control and Eviction officer has observed that in July, 2003 Sri Madan Mohan Mehta died

and immediately, the application for vacancy was filed and that time Sri Anil Kumar Mehta was found to be residing.

Counsel for the petitioner has submitted that at present no one is residing and the respondent no. 2 has also left for Haldwani and is a Bank Manager in Devi Dhura and the premises is lying vacant.

So far as the order impugned is concerned, I am not inclined to interfere with the order dated 13th October, 2001 passed by he respondent no. 1 under Article 226/227 of the Constitution of India.

However, it will be open for the petitioner to initiate fresh proceedings U/s 12/16 of the U.P. Act No. XIII of 1972 on the basis of subsequent events as stated above.

In view of the above, liberty is given to the petitioner to file fresh application and in case such application is filed the same shall be disposed of expeditiously in accordance with law.

Subject to the aforesaid observations, writ petition is disposed of. No order as to cost.

(Rajesh Tandon, J.)

09.05.2006
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